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SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202)424-7500
FACSIMILE (202) 424-7647

NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174

June 9, 2000

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VIA HAND DELIVERY

Magalie Roman Salas
Commission Secretary
Federal Communications Commission
Portals II
445 Twelfth Street, S.W., Suite TW-A325
Washington, D.C. 20554

Re: CC Docket No. 99-200/ Reply Comments of RCN Telecom Services, Inc.

Dear Secretary Salas:

On behalf of RCN Telecom Services, Inc. ("RCN"), enclosed please find an original and four (4) copies of RCN's reply comments in the above-referenced docket. Please date-stamp and return the enclosed extra copy. Concurrent with this filing, RCN is submitting a copy on diskette to the Network Services Division.

Should you have any questions with respect to this matter, please do not hesitate to call Ron Del Sesto at (202) 945-6923.

Respectfully submitted,

Ronald W. Del Sesto, Jr.

Ronald W. Del Sesto, Jr.

Enclosure

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 99-200
Numbering Resource Optimization	)	
	)	

REPLY COMMENTS OF RCN TELECOM SERVICES, INC.

Richard M. Rindler
Ronald W. Del Sesto, Jr.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

Dated: June 9, 2000

Counsel for RCN Telecom Services, Inc.

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SUMMARY

Number optimization is particularly relevant to new market entrants who require access to numbering resources when entering a new area and when expanding their footprint. The Commission must carefully consider the costs and benefits associated with adding an additional layer of cost for numbering resources and further consider its impact on the competitive marketplace. When engaging in this calculus, the Commission should give substantial weight to the fact that the overwhelming majority of parties that addressed this topic in either the Notice of Proposed Rulemaking, or in the Further Notice of Proposed Rulemaking, opposed pricing for numbering resources. In these reply comments, RCN did not attempt to set out all the arguments raised by the various parties in opposing the pricing for numbers. Rather, RCN selected certain arguments, for the sake of efficiency, to highlight the strong opposition to such a measure.

The Commission lacks the statutory authority to charge for numbering resources. While the Commission does have the authority to cover the costs associated with numbering administration, the Commission does not possess the authority to impose fees that would exceed these costs. If Congress had intended to allow for such action by the Commission, then Congress would have explicitly provided for it in the Telecommunications Act.

Aside from the lack of statutory authority, the Commission cannot implement a scheme for the pricing of such resources in a competitively neutral manner. Whether the Commission charges for the issuance of new numbers, or for allocated but not yet assigned numbers, incumbents will benefit over competitive providers.

Pricing for numbers would be bad public policy. Carriers that have access to the most capital will end up with the most numbering resources. To the extent that the Commission wants to insure broad deployment of numbering resources, the Commission would have to adopt a complex set of rules to administer numbers. Such a system would also stifle innovation. The majority of telecommunications services rely on the availability of numbering resources. The Commission would create another bottleneck, with carriers that have the most capital hoarding numbering resources. Ultimately, if the Commission were to adopt a pricing scheme, consumers would lose the most as all bills for telecommunications services would rise.

Before the
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In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	

REPLY COMMENTS OF RCN TELECOM SERVICES, INC.

RCN Telecom Services, Inc. ("RCN"), by undersigned counsel, hereby files its Reply Comments regarding the Federal Communications Commission's ("Commission's") Further Notice of Proposed Rulemaking ("Further Notice") in the above-referenced proceeding.[1]

I. INTRODUCTION

As noted by RCN and in other comments filed throughout this proceeding, number resource optimization is particularly relevant to new market entrants, who must have timely access to numbers when entering a new market and when expanding their network to provide a variety of telecommunications services to a larger number of people. The Commission's rules that govern the distribution of numbering resources already require carriers to incur substantial costs so that they may request such resources. The Commission must carefully consider the costs and the benefits associated with adding an additional layer of cost for numbering resources and further consider its impact on the competitive market. Perhaps the most significant fact that the Commission should consider when weighing the costs and benefits of pricing for numbers is that the overwhelming

[1] *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, rel. March 31, 2000.

majority of parties that addressed this issue in either the Notice of Proposed Rulemaking,[2] or in the Further notice of Proposed Rulemaking,[3] opposed the adoption of such a measure. More than any other issue considered in this proceeding, there was widespread agreement approaching unanimity in the opposition to pricing for numbers.

Rather then repeat past arguments, RCN devotes these reply comments to highlighting selected arguments against pricing for numbers. These reflect only a small number of the many arguments presented by numerous parties opposing the pricing for numbers. For the purposes of efficiency, RCN has not attempted to include all of the arguments against such pricing submitted by the parties.

II. THE FCC LACKS STATUTORY AUTHORITY TO CHARGE FOR NUMBERING RESOURCES

RCN joins those parties that state that the FCC does not have the requisite statutory authority to impose a pricing scheme for numbering resources.[4] While the Commission suggests that authority lies in Section 251(e)(2) of the 1996 Telecommunications Act, this provision clearly does not support the imposition of such a scheme. Section 251(e)(2) provides in relevant part that "[t]he costs of establishing telecommunications numbering administration arrangements and number portability

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[2] *See, e.g.,* Ameritech at 53-57; AT&T at 61-63; Bell Atlantic at 6-7; Choice One and GST Comments at 5; GTE Comments at 60-63; Liberty at 6; MCI WorldCom at 48-50; NextLink at 21-24; Omnipoint at 31-34; Qwest at 6-7; Time Warner at 22-23; USTA at 12; WinStar Comments at 38-41.

[3] *See, e.g.,* Ad Hoc Telecommunications Users Committee at 8-14; AT&T at 10-13; Bell Atlantic at 9-11; BellSouth at 12-17; CompTel at 6-8; GTE Service Corporation at 10-13; Joint Comments of Midvale Telephone Exchange, Inc. et al. at 1-10; Media One Group at 7-9; Nextlink at 12-16; Personal Communications Industry Association at 16-22; SBC Communications Inc. at 15-18; USTA at 5-7; Verizon Wireless at 24-27; Winstar Communications, Inc. at 12-21.

[4] *See id.*

shall be borne by all telecommunications carriers on a competitively neutral basis . . . ."[5] As such, the Commission can impose fees to recover the costs associated with number administration and number portability. Thus, carriers pay for the costs associated with number portability, number administration, number pooling and other area code relief measures. However, the power granted under this section of the Act does not include the authority to impose on carriers fees that exceed the costs associated with the numbering activities detailed above. If Congress had wanted to grant the Commission the authority to impose such fees for numbering resources then there would exist a separate provision allowing such authority.[6]

III. CHARGING FOR NUMBERING RESOURCES CANNOT BE DONE ON A COMPETITIVELY NEUTRAL BASIS

Even if the Commission did have the authority, it would be very difficult for the Commission to do so on a "competitively neutral basis." If the Commission were to charge carriers for the acquisition of new numbers, ILECs would reap great benefits by imposing costs on new entrants that ILECs would not incur.[7] ILECs have the ability to satisfy customer demand for numbering resources either by activating numbers that they simply have by virtue of being monopoly providers for such a long period of time, or due to customer "churn." Since new entrants do not have the same embedded base of customers as ILECs have, competitive providers do not have access to the same

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[5] 47 U.S.C. § 251(e)(2).

[6] For example, the FCC's authority to auction spectrum derives from a separate section of the act that specifically bestows that authority to the FCC. *See* 47 U.S.C. § 309(j).

[7] *See CPUC Comments at 10 n.16 (stating that "ILECs still possess more NXX codes than any new entrant by far . . . the two major ILECs, Pacific Bell and GTE California, posses roughly one-half of the NXX codes in each rate center in their respective company's service territory. In some smaller rate centers, ILECs may hold 90% of the NXX codes . . .").*

numbering resources as ILECs. While new entrants are already at a competitive disadvantage as a result of this simple fact, charging for numbering resources will exacerbate the situation.

The Commission cannot cure the situation by charging for numbering resources based on numbers allocated but not yet assigned. This approach also favors the incumbent. New entrants need to obtain numbering resources in areas in which they wish to expand their service area. New entrants thus begin from a zero base in a given service area. New entrants will, as a result, typically have a high percentage of unused numbers until they seek to attract customers to their service offerings. Monopoly providers have higher utilization rates since they are adding numbering resources to an embedded customer base. Thus, under this paradigm as well, new market entrants are put at a great disadvantage.

IV. PRICING FOR NUMBERS IS BAD PUBLIC POLICY

Even if the Commission had the statutory authority and could do so in a competitively neutral manner, RCN agrees with those commenting parties that argue that pricing for numbering resources is bad public policy.[8] The Commission has repeatedly asserted that numbers are a public resource and should be distributed on the basis of need.[9] However, under this new scheme, numbers would be distributed based on the ability of a carrier to pay for the resource. Such a system would result in carriers with large capital resources buying numbers in an effort to restrict the operations of their competitors. Rather than resulting in a system of efficient allocation, attaching a cost to numbers will encourage hoarding and waste of a scarce resource.

Another unintended consequence of such a system would be the stifling of innovation. Carriers that could purchase and hoard numbering resources would not only restrict the growth of

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[8] [INSERT LATER]

[9] *See, e.g., Administration of the North American Numbering Plan,* CC Docket No. 92-237, *Report and Order*, 11 FCC Rcd 2588, 2591, ¶ 4 (1995) ("*NANP Order*").

competition but also stifle innovation. Numbering resources are required for the majority of telecommunications services. The availability of the resource encourages new uses of the system. Numbering resources would become another bottleneck. Carriers would receive such resources based on access to capital.

In order for a pricing for numbers scheme to work, the Commission would have to adopt an extremely complex administrative system. In order to discourage gaming and to provide numbers on a competitive neutral basis, the Commission would have to develop a complex set of rules. Precisely because numbers are a scarce resource in a subsidy-ridden market dominated by monopoly providers, a market based system for the allocation of numbers is destined to fail. Free market forces work in markets that are free. This is not yet the case with the telecommunications market.

Finally, pricing for numbers is bad public policy as consumers will end up bearing the cost. Since all telecommunications services rely on numbers, prices for all consumers will rise as a result. It is entirely unclear what consumers will gain by such increased cost. Unlike current number conservation measures that promise to replace a system developed when the market was a monopoly, the only foreseeable benefit of such a system is to raise money for the Commission.

V. CONCLUSION

The Commission lacks jurisdiction to charge for numbering resources in excess of what it cost to engage in number administration. As expressed in many of the comments filed in this proceeding, if Congress had intended to provide this Commission with this authority, it would have specifically done so, as it did in the case of spectrum. Furthermore, there is no way to charge for numbering resources in a competitively neutral manner. Even if the Commission were to adopt and implement an extremely complex process, pricing for numbers runs counter to the development of competition.

For a number of reasons, pricing for numbers is bad public policy. Such a system encourages gaming resulting in carriers with the most resources obtaining and warehousing numbering codes. Pricing of numbering resources also stifles competition and innovation. The Commission would be creating a new bottleneck where access to capital is rewarded above efficiency and innovation. Consumers would lose the most as their bills for every telecommunications service that they use would rise as carriers pass the cost of numbers onto their customers, while, at the same time, the prices consumers pay for services are freed from the constraints of competitive forces.

Respectfully submitted,

Ronald W. Del Sesto Jr.

Richard M. Rindler, Esq.
Ronald W. Del Sesto, Jr., Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, DC 20007
Telephone: (202) 424-7500
Facsimile: (202) 424-7645

Counsel for RCN Telecom Services, Inc.

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